NEGLIGENCE—WHO ARE FELLOW SERVANTS—In applying the fellow servant rule, relieving the employer of all liability for accidents caused by the negligence of a fellow servant of the plaintiff, it is sometimes hard to determine who are fellow servants. A recent case in Michigan[1] decided that the plaintiff, who was employed by a purchaser of motors to inspect them before acceptance, was not a fellow servant of the employee of the defendant motor company, who was testing the motors in order to enable the plaintiff to make the inspection, as he is not employed by the same master or subject to the same control.

The general rule as to who are fellow servants is that they are all those who are under the control and direction of a common master in whose business they are engaged at the time of the accident.[2] While this rule is fairly well settled its application is sometimes very difficult. This is especially true in the case of independent contractors. Ordinarily an independent contractor is one who is ordered to accomplish a certain thing, but uses his own method of accomplishment and the servants of such a person are not fellow servants of the servants of him who employs such contractor.[3]

The rule does not apply as between a servant and a vice-principal. A servant who has the authority to employ other servants under his immediate supervision takes the place of the master and is not a fellow servant to the persons over whom he has control.[4] Where, however, the injured servant has been lent to the employer of the negligent servant and is acting under his direction and control he is a fellow servant of the latter though still in the general employment of a third party.[5] In such cases there are decisions which say that he must know of and assent to the lending.[6]

The fellow servant rule does not apply to risks of danger, not especially brought about by the fact that they are fellow servants, but such as anybody not in the same employment might run. After his working day is over and he has left employer's premises he is no longer a fellow servant of any of his co-employees.[7] Nor is he during dinner hour if spent off the premises.[8]

The rule applies not only to persons having a contract with

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[1] Johnson v. E. C. Clark Motor Co., 139 N. W. Rep. 30 (Mich., 1912).

[2] Wyllic v. Palmer, 137 N. Y. 248 (1893).

[3] Johnson v. Lindsay & Co., L. R. 1891 App. Cases, 371 (Eng., 1891); U. P. R. Co. v. Billeter, 28 Neb. 422 (1890); L. N. O. & T. R. Co. v. Conroy, 63 Miss. 562 (1886); Wagner v. Boston Elevated Ry. Co., 188 Mass. 437 (1905).

[4] Mo. Pac. Ry. Co. v. Williams, 75 Tex. 4 (1889); Denver S. P. & P. R. Co. v. Driscoll, 12 Colo. 520 (1889); Leighton Steel Co. v. Snell, 217 Ill. 152 (1905).

[5] Rourke v. White Moss Colliery Co., 2 C. B. D. 205 (Eng., 1876); Hasty v. Sears, 157 Mass. 123 (1892).

[6] Johnson v. Lindsay, L. R. 1891 A. C. 371 (Eng., 1891); Morgan v. Smith, 159 Mass. 570 (1893).

[7] Baird v. Pettit, 70 Pa. 477 (1872).

[8] Boyle v. Columbia Fire Proofing Co., 182 Mass. 93 (1902); Schumaker v. St. P. & Duluth R. Co., 46 Minn. 39 (1891).

the employer, but also to volunteers. Where a person has no interest in the work and volunteers his services he stands in the same position as a regular employee and voluntarily assumes the risks attendant upon fellow service.[9] But where the person volunteering has some interest and has the permission of the defendant to do the work he is not a fellow servant.[10]

Some courts have said that the reason for the rule is that the servants being together daily are in a position to influence their fellow servants into using proper care in the exercise of their duties. Following from the reason for it the rule should not apply to those persons who do not come unto close contact with each other.[11] Thus persons working in different departments of the same work who do not come into personal contact with each other are not fellow servants.[12]

Another test which has been laid down is that all engaged in an employment in the exercise of ordinary sagacity would have been able to foresee when accepting it that the negligence of a fellow would probably expose them to injury.[13]

At the present time approximately fourteen states have passed employers' liability acts which either partially or entirely do away with the fellow servant rule.

E. L. H.

PARTNERSHIP—WHAT CONSTITUTES THE RELATION—In *Floyd* v. *Kicklighter*,[1] plaintiff and defendant had entered into what they termed a "partnership agreement" for the purpose of buying and selling a tract of land. Plaintiff agreed to advance $15,000, the price of a tract upon which the defendant had an option, and the defendant with the money so advanced was to buy the land, sell to a purchaser then in prospect for a greater price, and after payment of expense incident to the purchase and sale, the balance of the proceeds was to be equally divided between them; the parties agreed to be jointly liable for expenditures. The court held that these allegations sufficiently stated a case of partnership to withstand a general demurrer.

Efforts have been made rather frequently to formulate a definition of partnership that would be at once both brief and comprehensive.[2] Pothier's definition is this: "*Societas est con-*

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[9] Eason v. R. R. Co. 65 Tex. 577 (1886); N. O. J. & G. N. R. R. v. Harrison, 48 Miss. 112 (1873); Longa v. Stanly Hod Elev. Co., 69 N. J. L. 31 (1903).

[10] Street Ry. Co. v. Bolton, 43 Ohio, 224 (1885); *cf.* Wischan v. Rickards, 136 Pa. 109 (1890).

[11] Beulter v. Grand Trunk Junc. Ry. Co., 224 U. S. 85 (1911).

[12] C. & N. W. Ry. Co. v. Moranda, 93 Ill. 302 (1879); Sullivan v. Mo. Pac. R., 97 Mo. 119 (1888). Under a statute, Meyers v. San Pedro L. A. & S. L. R. Co., 104 Pac. Rep. 736 (Utah, 1909).

[13] Collins vl Whiteside, 75 N. J. L. 865 (1908).

[1] 76 S. E. Rep. 1011 (Ga., 1912).

[2] See definitions collected in Lindley on Partnership. Eighth Edition, pp. 10, 11.